

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES: 'B', NEW DELHI**

**BEFORE SHRI R.K.PANDA, ACCOUNTANT MEMBER
AND SMT. BEENA A PILLAI, JUDICIAL MEMBER**

**ITA No. 4485/Del/2018
AY: 2015-16**

Civil Services Institute Near Moravian School Rajpur Road Dehradun PAN: AABTC6000B	vs.	DCIT, Circle-1(4) Rishikesh
(Appellant)		(Respondent)

Appellant by : Sh. Ashwani Taneja, Adv.
Sh. Hemant Arora, CA and Sh. Sourabh Goyal, CA
Respondent by : Sh. Vijay Kr. Jiwani, Sr.D.R.

Date of Hearing : 31.07.2018
Date of Pronouncement: 24.09.2018

ORDER

PER BEENA A PILLAI, JUDICIAL MEMBER

The present appeal has been filed by Assessee against order dated 18.05.2018 passed by Ld. Commissioner of Income-Tax (Appeals), Dehradun for Assessment Year 2015-16 on the following grounds of appeal.

"1. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. AO in making addition of Rs.5 crores on account of corpus fund received from Director Sports, Govt, of Uttarakhand by treating it as alleged income of the appellant society and that too by

recording incorrect facts and findings and without observing the principles of natural justice.

2. That having regard to the facts and circumstances of the case, Ld. CIT(A) ought to have treated the 'corpus fund' as 'capital receipt' irrespective of the fact that appellant society was not registered u/s 12A/12AA of Income Tax Act, 1961 and Ld. CIT(A) ought to have deleted the addition.

3. That in any case and in any view of the matter, action of Ld. CTT(A) in confirming the action of Ld. AO in making addition of Rs.5 crores on account of corpus fund as alleged income of assessee, is bad in law and against the facts and circumstances of the case.

4. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. AO in making disallowance of Rs.94,66,932/- on account of depreciation claimed by assessee on the ground that grant/subsidy received from Govt. of Uttarakhand should not be included in the actual cost of asset and that too by recording incorrect facts and findings and in violation of principles of natural justice.

5. That in any case and in any view of the matter, action of Ld. CIT(A) in confirming the action of Ld. AO in making disallowance of Rs.94,66,932/- on account of depreciation, is bad in law and against the facts and circumstances of the case.

6. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. AO in making addition of Rs.55,21,641/- on account of interest income by treating it as alleged 'income from other sources' and that too by recording incorrect facts and findings and in violation of principles of natural justice.

7. That in any case and in any view of the matter, action of Ld. CIT(A) in confirming the action of Ld. AO in making addition of

Rs.55,21,641/- on account of interest income, is bad in law and against the facts and circumstances of the case.

8. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in not reversing the action of Ld. AO in taking the profit & gains from business at NIL instead of loss while computing the assessed income.

9. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in not holding the impugned assessment order as bad in law as having been passed by an officer who was not having jurisdiction on the appellant.

10. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in not reversing the action of Ld. AO in charging interest u/s 234A, 234B and 234C of Income Tax Act, 1961.

11. That the appellant craves the leave to add, modify, amend or delete any of the grounds of appeal at the time of hearing and all the above grounds are will each other.”

2. Facts of the case in brief are as under.

Assessee filed its return of income on 06/09/15 declaring total income of Rs.(-)46,62,283/-. Subsequently case was selected for limited scrutiny and notice was issued to assessee under section 143(2) of Income Tax Act, 1961 (the Act) along with questionnaire, and notice under section 142(1) of the Act. In response to statutory notices, representative of assessee appeared before Ld. AO and furnished information/documents/explanation from time to time.

2.1. Ld. AO observed that assessee is a Society/AOP registered with Registrar of Societies, Uttarakhand vide registration No. 39/2013-14 on 06/05/2013, and declared its income from “Profit

and Gains from Business and Profession”. From details filed by assessee, Ld.AO observed that assessee earned interest of Rs.55,21,641/-, on which no tax was paid. It was also observed that assessee was not granted exemption under section 12 A/12 AA of the Act. Under these circumstances, case of assessee was converted into complete scrutiny, based on which notice under section 142 (1) along with questionnaire was issued calling upon assessee to file various details/information regarding organisation and its objects. From details so filed, Ld.AO observed that assessee received grant from Government of Uttarakhand amounting to Rs.5 crores, on which assessee earned interest of Rs.55,21,641/-. Ld.AO accordingly called upon assessee to show cause, as to why, grant received from Director of Sports, should not be taxed as income of society, in view of definition of income under section 2 (24) of the Act and, why, interest income earned on FDs should not be treated as “Income from Other Sources”.

2.2. In response to query raised, assessee submitted that money received by Society from Government of Uttarakhand was towards corpus, as is evident from letter of approval issued in respect of the same. It was submitted by assessee that these funds were to be expended only after budget, and not to be used for day-to-day activities of society, therefore, did not fall under purview of section 2 (24) (iia) of the Act. After considering submissions of assessee, Ld. AO came to conclusion that, merely because incidental income was earned by assessee society, for achieving its dominant object from providing hostel and catering activities, it cannot be said that assessee was doing trade or

business as contemplated under Proviso to Section 2 (15) of the Act and, therefore, amount received do not fall within the ambit of 'charitable purpose' as defined under section 2 (15) of the Act. Ld. AO thus treated amount received from Government of Uttarakhand as revenue receipt. Assessing Officer also denied depreciation claimed on capital asset, on the ground that, it has been acquired by others, and assessee was not eligible for claim of depreciation. Ld. AO also treated interest income earned by assessee as 'Income from Other Sources'.

2.3. Aggrieved by order of Ld. A.O., assessee preferred appeal before Ld. CIT (A), who upheld additions made by Ld. AO.

3. Aggrieved by order of Ld. CIT (A), assessee is in appeal before us now.

4. Ground No. 1-3 has been raised by assessee, against addition of Rs. 5 crores made by Ld.AO in respect of alleged capital corpus fund granted by Government of Uttarakhand as revenue receipt on the ground that, assessee is not registered under section 12 A/12 AA of the Act.

4.1. Ld.AR submitted that assessee society was formed with certain Objects, to promote welfare of Officers of Civil Services. The Society was formed under directives of Director Sports, and the services are exclusively for its members, whose names can be entered in Register of Members, as per eligibility. Ld.AR submitted that assessee received a sum of Rs. 5 crores towards "corpus fund" vide letter No. 563/VI-2/2014-4(5) 2004/T.C., dated 04/12/2014 from 'The Secretary, Uttarakhand'. Ld.AR referred to and relied upon page 30 of paper book, wherein copy of letter sanctioning funds has been placed, and translated

version of the same has been placed at page 104-105 of paper book. Ld.AR submitted that said letter very categorically remarks said fund to be 'corpus fund' which shall be utilised as per the terms and condition mentioned therein. He thus submitted that these corpus funds were not taxable, by relying upon decision of Co-Ordinate Bench of this Tribunal, Mumbai Benches, in *Chandraprabhu Jain Swetamber Mandir vs ACIT*, reported in (2017) 82 Taxmann.com 245. Ld.AR submitted that Ld. CIT (A) rejected assessee's claim only for the reason that word "corpus" is not mentioned in letter specifically.

4.2. Ld.AR further submitted that taxability of contributions towards 'corpus fund' of an Institution is *de hors* registration, under section 12 A/12 AA of the Act, and therefore authorities below erred in treating the amount received towards 'corpus fund' as 'revenue receipt' in the hands of assessee. He submitted that assessee received said fund from Government of Uttarakhand, with specific directions in the manner it has to be applied towards specific purpose. He thus submitted that amount received from State Government cannot be regarded as income under section 2 (24) (iia) of the Act, which applies only to voluntary contributions.

4.3. On the contrary Ld.Sr.DR placed reliance upon orders of authorities below, and submitted that funds received by assessee falls under the purview of section 2 (24) (iia) of the Act. It has been submitted that assessee is not carrying out any charitable activity as defined under section 2 (15) of the Act, and assessee benefits only a small set of individuals. Further it has been submitted by Ld.Sr.DR that assessee has neither obtained

any registration under section 10(23C)(iv), or registration under section 12 A/12 AA of the Act. He thus submitted that Ld. CIT (A) was right in disallowing the claim of assessee

5. We have perused submissions advanced by both sides in light of records placed before us.

6. It is observed from communication between assessee and Government of Uttarakhand Department of Culture, Tourism and Games, Dehradun, dated 01/12/14, that funds were released, as 'corpus fund' for operation of Civil Services Institute construction at Dehradun. It is also observed that only reason for disallowance of claim of assessee is because, phrase "Corpus Fund" has not been mentioned in letter dated 23/03/11, issued by Principal Secretary, Government of Uttarakhand to Director of Sports, Uttarakhand Culture, Tourism and Games. However it is observed that in Minutes of meeting by Government of Uttarakhand Department of Culture, Tourism and Games, dated 31/05/13 presided over by Chief Secretary, there is a specific reference regarding budget allocation of Rs. 5 crore as "corpus fund" from Sports Department to assessee, for its daily functioning in clause (vii). For sake of convenience said clause(vii) is reproduced herein:

"(vii) but detailed discussion was made in respect of daily functioning of the institution. This year one-time budget allocation of Rs. 5 crores as corpus funds from sports Department has been made. During the discussion it was also felt that there is a need for further of additional fund, so that there is no hindrance in the functioning. It was directed that for sanction of additional corpus

fund the file to be submitted to Hon'ble Chief Minister through proper channel."

6.1. We therefore do not have any doubt on nature of funds to be towards 'corpus'. Further assessee has been able to prove that corpus fund was received for meeting out capital expenditure which according to explanation of assessee have been used actually to meet the capital expenditure. Thus, in our considered opinion, corpus fund which is meant for specific purpose to meet out capital expenditure could not be part of annual receipts of the Society, even if no registration u/s 12AA has been granted.

6.2. Accordingly ground nos. 1 to 3 raised by assessee stand allowed.

7. Ground No. 4-5 has been raised by assessee on disallowance of depreciation claimed amounting to Rs. 94, 66, 932/-.

7.1. Ld.AR submitted that Ld.AO disallowed depreciation claimed, in light of *Explanation* 10 to section 43 (1) of the Act. He submitted that disallowance made by Ld. AO is on the ground that, above funds received from Secretary Sports Department, Uttarakhand, was treated by Ld.AO as subsidy and construction having owned by Sports department, Uttarakhand. Ld.AR emphasised that Principal Secretary, Sports Department, Uttarakhand is Chairperson for regulating and monitoring construction of civil works of assessee. He is in the capacity of a trustee for assessee and any sum received for purposes of construction, would be towards 'corpus'. It is also submitted that any construction so made would be included in assets of assessee on which depreciation cannot be denied.

7.2. Ld. Sr. DR placed reliance upon the orders of authorities below.

8. We have perused submissions advanced by both the sides in the light of records placed before us.

8.1. It is observed that Principal Secretary, Uttarakhand on 29/03/11 directed Sports Department, Uttarakhand to bring assessee into existence. He nominated budget fund to meet planned cost for construction of building for assessee. It is observed that Ld. A.O. relied upon the view that the building owned by assessee has been constructed by the grant sanctioned by Government of Uttarakhand and, therefore, in view of Explanation 10 to Section 43(1), depreciation could not be allowed on such construction.

8.2 As we have already held in preceding paragraphs that the money received by assessee from Government of Uttarakhand was in the nature of corpus which was to be utilised for capital expenditure of assessee, we differ to follow the view taken by Ld.CIT(A). Further it is observed that objects of society works on principle of mutuality and has been created for benefit of its members.

8.3. We therefore direct Ld. AO to allow the depreciation on such building as claimed by assessee.

8.4. Accordingly ground nos. 4 & 5 raised by assessee stand allowed.

9. Ground No. 6 & 7 are in respect of treatment of interest earned by assessee as “Income from Other Sources”.

9.1. Ld.AR submitted that assessee had deposited funds received towards corpus with bank, on which interest was

earned to an extent of Rs.55,21,641/-. Assessee treated interest income as business income, which was disallowed by Ld.AO, by treating it as “Income from other sources”. Ld.AR submitted that the ratio laid down by *Hon’ble Supreme Court* in case of *Bangalore Club* reported in 350 ITR 509 is squarely applicable to facts of present case.

9.2. On the contrary Ld.Sr.DR placed reliance upon orders passed by authorities below.

10. We have perused submissions advanced by both the sides in the light of records placed before us.

10.1. In our considered opinion, amount on which interest has been earned by assessee, itself is exempt from tax under ‘doctrine of mutuality’. Further it has been observed from objects of the society that treatment of excess funds must be in furtherance of objects of society. In the instant case, surplus funds were to be used for any specific service, infrastructure, maintenance or for any other direct benefit for members. Further from submissions of assessee before Ld. CIT (A) it is observed that bank with whom fixed deposits are maintained are not its members and assessee did not claim for any exemption of interest income on the basis of ‘doctrine of mutuality’, instead has considered for taxability under head ‘Income from Business’. We therefore do not find any reason to change the head of interest income to “income from other sources”.

10.2. Accordingly Ground nos. 6 and 7 raised by assessee stands allowed.

11. Ground No. 8, 9 and 11 are general in nature and do not require any adjudication.

12. Ground No. 10 is in respect of interest under section 234 B, C of the Act, which is consequential in nature.

Accordingly all grounds raised by assessee stand allowed.

13. In the result appeal filed by assessee stands allowed.

Order pronounced in the Open Court on 24/09/2018.

Sd/-

**(R.K.PANDA)
Accountant Member**

Sd/-

**(BEENA A PILLAI)
Judicial Member**

Dated: the 24th September, 2018.

- Gmv

Copy of the Order forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR
6. Guard File

By Order

Asst. Registrar
ITAT, Delhi Benches, New Delhi

S.No.	Details	Date
1.	Draft dictated on	20.09.18
2.	Draft placed before author	
3.	Draft proposed & placed before the Second Member	
4.	Draft discussed/approved by Second Member	
5.	Approved Draft comes to the Sr. PS/PS	
6.	Kept for pronouncement	
7.	Order uploaded on	
8.	File sent to Bench Clerk	
9.	Date on which the file goes to Head Clerk	
10.	Date on which file goes to A.R.	
11.	Date of Dispatch of order	